

# Dispute Resolution Commission

## MINUTES

**Friday, November 6, 2015  
NCJC Raleigh, NC**

Members present: Cash, C. Anderson, Armeña, T. Clare, Dollar, Evans, Gullick, Hicks, Long, McCullough, Ponton, Seigle, and Webb. Ex-officio members, guests, and staff present: Neese Brown, J. Clare, Hayden, Henderson, Hopkins, Igou, Laney, Little, Minor, Ratliff, Rose, Schafer, Stroud, and Robinson. The following sent their regrets: Caldwell, Spence, Lee, Nesbitt, and Vincent.

Judge Cash welcomed everyone and asked attendees to introduce themselves. Judge McCullough next administered the oath of office to Judge Cash, Judge Anderson, Ms. Dollar, and Mr. Long all of whom had been re-appointed.

Judge Cash asked whether there were corrections to the minutes. Ms. Hicks noted a typo at the bottom of page 5 (...chair of the Commission's Legislative...). Mr. Little offered additional, substantial corrections to reflect comments he made at the August meeting. Ms. Robinson typed up Mr. Little's corrections and distributed them to the attendees and the minutes were approved with Mr. Little's changes and the correction noted by Ms. Hicks.

Mr. Little gave a legislative report. He noted that HB 303 containing the cease and desist legislation had passed in the House and was now before the Senate. HB 38, he added, passed in the House and would also be before the Senate in the coming session. Mr. Minor reported that the short session begins on April 25, 2016.

Judge Cash reported that the Executive Committee is reviewing salary requests from Ms. Ratliff and Ms. Hopkins. He added that he is consulting with Judge Warren on the matter and will have a report at the next Commission meeting.

Judge Cash asked Judge McCullough to update the Commission on the CME Proposal that was posted for comment. Judge McCullough noted that comments were included in the packet and added that many mediators had not responded. He said that about half those who responded favored the Proposal and the other half opposed it. He said a number of mediators had strongly suggested that approved CME be accessible on-line. Other mediators had suggested that mediators merely be required to certify that they had read the rules and Standards. Mr. Schafer suggested some changes to the Proposal that would modify it to include IC cases ("...for the courts and other venues.") Judge Cash noted that the comment period has expired and Ms. Hopkins observed that comments were still trickling in. Judge Cash asked Ms. Ratliff to recirculate her 2013 state-by-state survey on CME to Commission members. Mr. Armeña noted that there appeared to be some confusion among mediators about the proposed requirement and particularly its relationship to CLE and he suggested that perhaps some clarification was in order. He asked whether the comment period could be extended and some additional information added. Judge Webb noted that most of the objections related to keeping training on-line and inexpensive. He thought that if those matters could be addressed that would take care of most of the concerns raised. Judge McCullough agreed that he thought it might be appropriate to extend the comment period. Ms. Clare said she believed the Commission needed to forge ahead with CME -- that there will be an additional opportunity to comment when the Proposal is finalized. Mr. Ponton suggested highlighting the language which made it clear that the hours required could be CLE hours and that mediators are not being asked to

do anything beyond their CLE requirement. Judge Cash indicated that he will use his From the Chair message in the Commission's newsletter to clarify matters on CME. There followed some discussion about providers and Judge McCullough noted that the proposal does not speak to providers. Ms. Neese Brown said she would be concerned about a single provider, but at the same time she was also concerned about the need to vet training programs and trainers. Judge McCullough said that vetting will not be an issue if the Commission sticks with CLE approved courses which are already vetted by the State Bar. Mr. Little suggested that some vetting will be necessary in that a program will have to be found to relate to Commission rules, Standards, etc. Judge Cash noted that the Certification Committee will need to come up with a more detailed proposal after the Section's annual meeting. Ms. Neese Brown confirmed that the cost of CLE currently runs between \$95-\$125 for 2 hours of on-line training.

Mr. Long next reported for the FFS Program Oversight Committee. He noted that his Committee has reviewed the FFS Benchbooks and commends them to the Commission. Judge Cash called for a vote and the FFS Benchbooks were adopted and will be distributed. Ms. Gullick asked about the cost to distribute them statewide to Chief District Court Judges and court staff. Ms. Hopkins and Ms. Robinson estimated around \$2,000. Judge Cash called attention to the FFS caseload statistics. He noted there some districts are still not reporting and some that had been reporting, had stopped. He suggested the Committee may want to bring Ms. Nesbitt in for an update on statistics.

Ms. Gullick next reported for the Standards and AO Committee. She began with proposed AO 32 that would have addressed an anonymous complaint and which the Commission had tentatively reviewed at the August meeting. Her Committee, she reported, had determined that it did not want to issue an AO based on unsubstantiated conduct and, as such, was withdrawing it. She next noted that the issue of mediators simultaneously acting as interpreters has arisen. She noted that the AOC was looking at its rules/Standards relating to interpreters. Ms. Gullick noted that the Committee may need to issue 2 or 3 AOs on the topic of whether a mediator can serve as an interpreter and/or translator for the parties and in what language the agreement is to be drafted. Ms. Seigle indicated that CDSS serves a lot of Spanish speakers and there are issues that come up relative to agreement drafting. Mr. Minor indicated that MNNC centers are struggling with these issues as well.

Judge Anderson reported for the Grievance Committee. He briefly described the various complaints and other matters the GDC Committee had considered this quarter. He noted that the Committee is concerned about an FFS mediator who experienced a serious grievance/complaint; was suspended by the State Bar; did not renew his FFS certification; and, as suggested by his website, now intended to mediate full-time. This, he noted, raises the issue that the FFS Rules do not require certification of FFS mediators. Judge Anderson also noted that the GDC Committee was looking at two mediators who had information posted on their Mediator Profiles which might run afoul the Commission's Advertising Guidelines. He asked for clarification that the Committee had authority to remove information from a mediator's Profile that it determined violated the Guidelines. The Commission authorized the GDC to remove the information after it notified the mediators of the concern/violation. He also noted that a complaint had been filed which raised neutrality concerns in light of a mediator's FaceBook postings and FaceBook friends. There followed some considerable discussion on the matter of social media and the Commission's new Social Media Committee charged with looking at the issue. Judge Stroud suggested that Kentucky has come up with a reasonable FaceBook policy for their judges and suggested it would be worth considering. Judge Webb echoed that he believed this is an important issue. Judge Anderson noted that family law seems particularly ripe for social media concerns/conflicts and as fast as things are changing technologically, that it may be difficult to come up with a viable policy relative to mediators and the use of social media. .

Ms. Seigle reported for the Ad hoc District Criminal Court Committee. She reported spirited discussions at their Committee meeting that morning and said she believes they will have a revised HB 38 for the short session. She asked Judge Stroud to report on her survey of district criminal court judges' attitudes

toward mediation. Judge Stroud noted that there were many positive comments, but there is room to do more education given that some judges appeared to be unaware of the mediation services being offered in their districts. Ms. Seigle reported that she expects her committee will be working in concert with the Chief Justice's new commission looking at the future of the NC courts. Mr. Minor added that he believes the Committee has great potential and that the MNNC appreciates the inclusivity and opportunity for serious dialogue. He also hopes the Committee will eventually be able to come up with a more unified, streamlined community mediation statute.

Judge Cash next called for liaison reports. Ms. Hayden reported that the JSSC is having their annual spring conference and will be inviting the Commission to attend. Mr. Igou reported for the Section noting its annual meeting is scheduled for February 19 at the Westin in Charlotte and he invited all to attend. He also reported on a MAPP Project to provide pro bono mediator services. He added that there was a lively discussion at their last meeting about FFS mediators not having to be certified. He said he had been charged with reaching out to the Family Law Section to explore this concern with them. Mr. Little noted that the FFS certification issue needed to be handled delicately and it was important who was brought into the discussion. He asked Mr. Long's Committee to coordinate with the Section on the FFS certification issue. Mr. Igou agreed to hold off on contacting the Family Law Section until there could be some further discussion about the matter. Mr. Minor reported on behalf of the MNNC that he is becoming increasingly concerned these days about the number of calls he receives from would-be mediators who have had ethical/conduct concerns in their past. Ms. Rose reported on a new effort that is underway in Wake County with volunteer mediators coming into family court periodically and providing free mediation services. Mr. Schafer reported that Mr. Little and Ms. Gullick did some ethics training at the IC's Annual Conference and it was well received. Judge Stroud reported that the Court of Appeal's Program is moving forward and she is trying to get everyone trained.

Judge Cash called attention to the Commission's financial situation and noted that the Commission has been operating in the red the last two years. He explained that the change was due to additional personnel costs with the hiring of Ms. Hopkins. He added that there was a \$152,000 reserve amount that the DRC had accrued over time, so there was no immediate concern. However, Judge Cash noted that the Executive Committee was recommending that the Commission forego a retreat next year in the interest of conserving funds. There followed some discussion on the matter and the Executive Committee will continue to look at options for conserving Commission funds.

Ms. Ratliff gave her office report. She noted that the 2015/16 renewal period has concluded and renewals fell a little short, off by about 40. She added that there had been more than 350 renewals by credit card, so the new credit card payment option had been well received. She added that she and Ms. Hopkins along with Judge Webb would be traveling to Tennessee later this month to participate in an ADR conference for state level administrators and policy makers.

Judge Cash next asked attendees to consider potential meeting dates. He noted a meeting was already set for February 26, 2016, in Raleigh. An additional meeting was set for May 20, 2016, also in Raleigh. Maureen will confer with Judge Cash about potential dates for a September and November meetings.

There being no further business, Judge Cash adjourned the meeting.

# **Dispute Resolution Commission**

## **MINUTES**

### **Commission Retreat**

**Friday-Saturday, August 14-15, 2015, in Asheville, NC**

**Friday, August 14, 2015**

**1:00 P.M.**

Members present: Judge Gary Cash, Lynn Gullick, Judge Charles Anderson, Lucas Armeña, Judge Jesse Caldwell, Thomas Clare, Lorrie Dollar, Susan Hicks, Judge Douglas McCullough, Diann Seigle, Mark Spence, Judge Teresa Vincent, and Judge William Webb. Ex-officio members present: Ann Anderson, LeAnn Nease Brown, Jackie Clare, Tina Estle (for Jody Minor), Tueresa Hayden, Rick Igou, Frank Laney, Judge David Lee, Andy Little, Stephanie Nesbitt, Ellen Rose, John Schafer, Judge Donna Stroud, and Judge Joseph Turner. Guests and Staff Present: Judge Sharon Tracey Barrett, Barbara Davis, Harriet Hopkins, Laura Jeffords, Amanda Leazer, Catherine Peglow, Leslie Ratliff, and Judge Ralph Walker.

Judge Cash welcomed everyone to the Commission's annual retreat and introduced guests. He called for comments on the May, 2015, minutes. Mr. Schafer noted that his name was omitted from the attendees and Judge Vincent noted a typo on page 2, "thank" should have been "thanked". The minutes were approved with these corrections.

Judge Cash next called on Ms. Peglow, NCBA Continuing Education Director, to speak on the topic of CLE. She distributed a handout which explained how attorneys create an account to log into the NCBA's website to view CLE offerings available on demand and to purchase and view them. She explained that the NCBA breaks longer, live programs into shorter 1 hour segments for purposes of its on demand, taped programs. She suggested that mediators could also create an account for the purpose of accessing NCBA program offerings approved for CME credit by the Commission. Judge Vincent asked about time limits and Ms. Peglow responded that a purchaser had 90 days to watch an on-line presentation. A question was raised as to accountability, i.e., how will the Commission know that a mediator viewer actually watched? Ms. Peglow noted that there are prompts imbedded in programs which ask the viewer to verify that s/he is still watching. Ms. Peglow directed attention to a paralegal reporting form and suggested that mediators could report to the Commission using a similar form. Ms. Gullick expressed concern that CME training could encompass topics that the State Bar might not be willing to approve for CLE credit. Judge McCullough noted there has recently been a spate of disciplinary matters before the Commission. As such, he said the proposed CME requirement was intended not so much to foster skills development as to refresh mediators on program rules and their ethical responsibilities under the Standards. He suggested that if that can be accomplished, then, perhaps the Commission will want to move into skills building. Judge Webb asked about non-attorney mediators? He indicated that he has problems with the third paragraph of the proposal and did not think the Commission should be singling out a specific trainer. Judge McCullough and Mr. Little responded that this paragraph was not so much about singling out a particular trainer, than recognizing that the Section was uniquely suited to assist the Commission in implementing CME. Mr. Laney asked how the NCBA would communicate CME activity to the Commission's office? Ms. Peglow was not sure how that would be accomplished, but was confident matters could be worked out.

Judge Cash asked Judge McCullough to follow Ms. Peglow's presentation with the Mediator Certification and Training Committee's report. Judge McCullough called attention to the CME proposal in the meeting packet. Judge Vincent suggested adding a rationale or preamble to the proposal, explaining why CME was necessary along the lines of what Judge McCullough had said earlier relating to the spate of complaints. Judge Turner suggested treating paragraph 1 as the rule and have the rationale follow that. The remainder of the proposal, he suggested, was logistics and did not need to be included. Ms. Ratliff noted that the office frequently gets calls from certification applicants regarding the scarcity of observations. Currently, she noted, mediators get CME credit for allowing observers and she is concerned that, if that is no longer the case, some mediators may be less inclined to work with applicants. Mr. Little acknowledged that the proposal does not provide for mediators to receive CME credit for allowing and debriefing applicant observers. There followed considerable discussion about the applicant observer issue. Judge McCullough suggested allowing one hour of CME credit for working with an observer. Ms. Nease Brown said she was opposed to this, that she wanted to limit CME to educational activities. Ms. Anderson suggested that perhaps the Section could generate a list of mediators willing to assist observers. Judge Cash asked Mr. Igou to consider ways the Section might be able to help with this problem. Judge McCullough moved that the Commission adopt the rationale for CME described above (to be put into writing by staff for Committee review) and paragraph 1 of the Inaugural CME Proposal and post them for comment. Judge Anderson asked about the need to amend program rules to incorporate a CME requirement. Judge McCullough suggested the Commission seek comment first and then consider whether rules revisions are necessary. Judge McCullough's proposal was adopted, i.e., paragraph 1 of the Inaugural CME Proposal and the rationale for it would be posted for comment. Judge Cash also tasked Judge McCullough's Committee with considering how observations would fit, if they do, in the CME process. Judge Cash clarified that Ms. Anderson and Mr. Little will serve as liaisons for purposes of relaying the Commission's CME proposal to the Section. Mr. Igou asked Mr. Little to also propose to the Section that it consider creating a list of mediators willing to allow observers.

Next Judge Cash called on Ms. Clare to make a presentation on liability and immunity issues. Ms. Clare reported that NC licensing boards typically carry liability insurance, but she noted that this Commission is a little different in that it is a quasi-licensing body and its staff are state employees. Staci Meyer of the AG's office, she reported, had advised the Commission that both the Commission and its staff would be covered by the Tort Claims Act and, as such, she did not think insurance was necessary. However, she suggested it would be prudent for the Commission to get a written opinion from the AG in the matter. Ms. Clare directed attention to the letter in the meeting packet addressed to Robert Hargett of the AG's office and the list of questions that was included. Ms. Clare suggested it might be better to ask the question relating to mediator immunity and representation later. Mr. Little suggested taking that question, #6, out and modifying the letter accordingly. The group agreed that item should be deleted. Mr. Clare suggested taking out the question relating to workers' comp coverage and it was agreed that be deleted also. Judge Cash asked Ms. Clare to reframe the letter and get it out to Commission members by email. Judge Caldwell said he is very interested in the issue of mediator immunity and hoped the Commission would pursue that matter later. Judge Cash agreed to assemble a delegation to talk with the AG concerning the mediator immunity question.

Judge Cash asked Mr. Little for his legislative report. Mr. Little noted that he would defer matters relating to HB 38 to Ms. Seigle's ad hoc committee report. He noted that HB 303 is

stalled in the Senate and he does not know why it is not moving forward. The bill contains revisions to DRC and program enabling legislation. Mr. Little added that the legislation sponsored by Rep. Bishop, HB 597, has passed and has been signed by the Governor. Staff will distribute a copy to the members.

Judge Cash reported for the Executive Committee. He was pleased to report the AOC had determined to add a credit card payment option to the Commission's renewal application at no cost to the Commission. Ms. Ratliff spent a moment explaining how credit card payment would work. Judge Cash indicated that he, Ms. Ratliff, and Ms. Hopkins would be attending a dispute resolution administrator's conference in Tennessee in November.

Judge Caldwell reported for the MSC Program Oversight Committee and presented a proposed revision to MSC Rule 4. He described the proposed revision as an alert or reminder to mediators to raise the issue of pre-audit certificates with the parties when governmental entities are involved in a mediation. Ms. Nease Brown suggested that the cautionary language in the last paragraph beginning with, "Notwithstanding anything...", seemed out of place in Rule 4, that it would better fit as a comment to that rule or as duty under Rule 6. Ms. Dollar noted that the rule should specify that the pre-audit relates to municipalities and counties and not state or federal entities. Judge Cash asked the Committee to revise the proposed rule along the lines suggested above for re-consideration on Saturday. Judge Caldwell also mentioned that he is trying to arrange for the Commission to make a presentation on confidentiality and inadmissibility at the upcoming Superior Court Judges Conference. Judge Turner noted that the presentation needs to be made to new judges as well.

Judge Cash reported that Mr. Long could not be present due to a death in his family and asked Ms. Ratliff if there was a report for the District Court (FFS) Program Oversight Committee. She called attention to the proposed FFS Benchbooks that were circulating, reminded parties of the rationale for the Benchbooks, and thanked court staff for their assistance with the project. Ms. Hopkins added that Mr. Long's Committee would likely submit the Benchbooks for approval at the November meeting.

Ms. Gullick reported for the Standards and Advisory Opinions Committee that there had been no comment on AO 31 (2015) tentatively adopted at the May meeting. She moved for final approval, received it, and Commission staff were asked to distribute the AO to mediators. She reported that her Committee had been working on another AO (proposed AO 32 (2015)) to address an egregious situation which had been reported anonymously to Mr. Little. Ms. Gullick noted that Ms. Ratliff had expressed concern that an AO would be published regarding a mediator's conduct with no effort made to investigate the matter or to seek any clarification from the mediator. Mr. Little responded that the party who complained anonymously would not have done so if he had thought the mediator would be investigated and possibly disciplined. Judge Caldwell asked whether if the situation is so egregious, the Commission ought to be monitoring this mediator going forward? Judge McCullough noted that perhaps the Commission should refuse to take information if the person insists on remaining anonymous and insists that the mediator not be disciplined. It was noted that complaints cannot be filed anonymously if staff cannot independently verify the allegations. Ms. Seigle recalled that Commission members had counseled mediators in the past and questioned whether this situation might be appropriate for that. Mr. Little added that this mediator is not mediating much anymore. The Committee will revise the AO to clarify that it is based on circumstances that have not been investigated and email it to Commission members for an email vote.

At this time, the Commission adjourned to reconvene tomorrow morning at 8:30 AM.

**Saturday, August 15, 2015**

**8:30 A.M.**

Judge Caldwell reported that the MSC Program Oversight Committee was now ready to submit proposed language for a comment to Rule 4 and a revision to Rule 6 relative to the pre-audit certificate language discussed the day before. He thanked Mr. Armeña and Judge Lee for their assistance in addressing the concerns raised by Commission members. Judge Caldwell moved that the Commission adopt the Committee's proposed revisions and the motion was approved. The changes will be posted for comment.

Judge Anderson next reported for the Grievance and Disciplinary Committee. He noted there had been a number of disciplinary matters before his Committee involving both certified mediators and applicants for certification. He noted that one FFS mediator the Committee had decertified last quarter had appealed his discipline and the matter was scheduled to be heard by the Commission on November 5, 2015. In another serious situation where his Committee had decertified a district criminal court (DCC) mediator last quarter, he noted there had been no appeal and the matter was now closed. He noted that as Chair, he had dismissed two complaints this quarter when allegations underlying the complaints could not be substantiated. Judge Anderson noted that some matters were still pending before his Committee, including a complaint filed by a Commission member against an MSC mediator who drafted an agreement for represented parties, failed to include an important term in that agreement, and then filed an affidavit with the court regarding the agreement.

Next, Judge Anderson called attention to a proposed a revision to District Criminal Court Rule 7 which had been tentatively adopted at the last meeting and posted for comment. He reported there had been no comment on the proposed change which was an outgrowth of the situation leading to the decertification of the DCC mediator noted above. He asked for final approval of the revision which is intended to require community mediation centers participating in the DCC Program to notify the Commission of any complaints filed against certified DCC mediators. The Commission gave its final approval to the change. Judge Anderson next called attention to a proposed revision to DCC Rule IX relating to court staff reports of mediators failing to fulfill their case management duties. Judge Anderson noted that the template letters used earlier to address these reports had not worked and this was an effort to introduce more flexibility into this process. Ms. Seigle asked about whether mediators shouldn't be disciplined if they violate case management rules. Mr. Little noted that due process concerns were extremely important and that the Commission should not be seen as punitive by mediators. Judge Anderson noted that this rule is largely intended to address situations where no serious concerns are involved. Mr. Schafer noted that a failure to file an ROM timely is a rule violation. Ms. Seigle noted that the Commission was created as a regulatory body by statute and was supposed to be enforcing the rules. Judge Lee suggested that the DRC Chair also receive a copy of the summary of the concern. Ms. Seigle noted this was a lot of layers. Mr. Little clarified that this new rule was an outgrowth of a situation where a mediator had complained about a letter he had received from staff and both he and Judge Anderson felt the layering was important to protect staff. Judge Caldwell noted that many SRSCJs were not familiar with mediation having come up through the criminal system and were not going to deal with these issues. Judge Lee affirmed that view and noted that the judges delegate authority to run the program to their TCC or JAs and don't want to be bothered with such matters. Ms. Dollar noted that she was sure that most court staff don't call the Commission until they are at the end of their rope with a mediator. Ms. Seigle said she still thinks it is important to preserve staff discretion. Ms. Nesbit noted that she is hearing concerns

from court staff that there is a problem with mediators not filing reports. She is concerned that if court staff thinks the Commission is not interested in helping them, the statistics will suffer. Judge Caldwell and Judge Lee noted that they think the new rule is a good compromise. Judge McCullough moved for adoption of the proposed Rule IX changes with Judge Lee's amendment and it was adopted. Judge Vincent stressed that it is important that Commission staff memorialize telephone conversations with mediators and record them in the mediator's file. Judge Cash asked Ms. Seigle for a report from the Ad hoc District Criminal Court Committee. Ms. Seigle asked Mr. Laney to first report on some proposed major statutory changes to G.S. 7A-38.7 and some proposed changes to G.S. 7A-38.5 originating with the Committee and relating to district criminal court mediation. Mr. Laney reported that the Committee met in July and he was surprised at the level of unanimity. There was wide agreement regarding concerns about the existing legislation and particularly the concern that the statute had established the dismissal fee in such a way that it could be characterized as a contingency fee, i.e., it is due and payable only when a dispute settles. Mr. Laney noted that centers were also very concerned about the situation in which the Commission had decertified a DCC mediator for inappropriately pocketing dismissal and restitution fees. Mr. Laney noted that statutory changes proposed by the Committee seek to address these concerns and others. Specifically, the proposed revisions replace the \$60.00 dismissal with a \$100.00 fee to be assessed in all disputes that are mediated after referral to mediation. All other fees, including the administrative fee are eliminated. The \$100.00 fee is to be paid to the Clerk. If the case is not settled in mediation and proceeds to trial, the proposed statute treats the \$100.00 fee as a credit toward reducing any court costs that may be assessed after the trial and, should a judge determine the charges to be frivolous, the complaining witness may be required to reimburse the defendant.

Ms. Seigle followed Mr. Laney and reported that the Mediation Network of North Carolina (MNNC) was extremely upset with the Commission. Mr. Little's efforts at the General Assembly, she suggested, had resulted in an amendment proposed by Representative Davis to HB 38 which was unacceptable to the MNNC. The MNNC, she reported, had moved to block the amendment which would have eliminated the administrative fee that centers may charge in district criminal court cases. She added that the MNNC had thought the Commission wanted to collaborate with it in addressing concerns and strengthening efforts to mediate district criminal court cases, which was why the Ad hoc Committee had been established. She said the MNNC considered Mr. Little to have acted unilaterally and without appropriate authority from the Commission. She added that the MNNC wanted Mr. Little to have no further involvement with HB 38. Judge Cash explained that Mr. Little, as chair of the Commission's Legislative Committee, had been assigned to monitor the passage of HB 38, and had been in repeated communication with Judge Cash. Judge Cash also stated that he had been fully aware of Mr. Little's activities and had informed the Vice Chair of the same. Judge Caldwell asked how the matter got to the attention of Representative Davis. Ms. Seigle asked Mr. Little to explain. Judge Cash and Mr. Little responded that AOC staff had asked the Commission to comment on any fiscal ramifications of the bill. Thereafter, Mr. Little had spoken with legislative staff working with Representative Davis about the DCC mediator who had pocketed dismissal and restitution fees. Representative Davis, Mr. Little reported, was shocked that fees were being charged by the centers and in some instances were being collected in the courtroom. Several times during the morning of the August 10, 2015, Mr. Little contacted Diann Seigle. In one such conversation, Mr. Little asked Ms. Seigle to contact Jody Minor of the Mediation Network to determine the authority under which the Centers were charging fees additional to those set out in

NCGS 7A-38.71. Ms. Seigle made that call and learned from Mr. Minor that the authority was a simple sentence in NCGS 7A-38.5. That sentence does not specifically mention fees for mediating criminal cases in District Court. Later that day, Representative Davis directed legislative staff to draft an amendment to HB38 to prohibit the practice of collecting fees for community mediation centers work in mediating criminal cases. Mr. Little did not see that amendment until Thursday of that week, the day when Representative Davis first discussed it on the floor of the House, and he did not participate in that drafting effort except to clarify a question of legislative staff about NCGS 7A-38.5. Representative Davis amendment eliminated the mediation fees charged under this section. Ms. Seigle responded that there had been no discussion of the proposed amendment by the Commission and no vote on it. She noted that centers could have been significantly harmed by the proposed legislation. It was noted by many that matters had moved very quickly. Ms. Seigle noted that Mr. Minor, the MNNC's Executive Director, was relieved that the Commission had decertified the mediator who had pocketed fees, but noted it had been slow to act and had done nothing to examine the role of the center and its director in the matter. Ms. Gullick asked whether the Commission had authority over the center or its director? Mr. Laney suggests that the Commission should at least take a look at the matter. He added that the center's board had now been entirely replaced. Mr. Little said he is happy to step away from the process in order to better the working relationship of the Commission and MNNC, and Judge Cash stated his appreciation of Mr. Little's decision. Ms. Seigle added that the MNNC will decide Monday whether to support the Committee's proposed legislation. Mr. Laney doubts the proposed language will make it into the bill, noting the number of changes and that it is late in the process. Ms. Seigle suggested the AOC might be able to effect a temporary fix to address the issue of mediator collection of administrative fees. Mr. Little and Mr. Igou suggested some additional changes to Mr. Laney's draft, including striking the last sentence in 7A-38.7(c). Judge Cash asked Ms. Seigle whether she wanted the Commission to express general approval of the elements of Mr. Laney's proposed amendments as opposed to adopting the specific language. Ms. Seigle thought the first course was the better approach. She noted that if the MNNC is not in agreement, then they will likely not want the Commission to proceed unilaterally. The Commission approved the elements of the proposal and Judge Cash appointed Mr. Laney to liaison between the Commission and the MNNC for purposes of HB 38 and the Committee's proposed legislation. Judge Cash next called for liaison reports. He first called on Ms. Estle representing the MNNC. She asked the Commission to bear in mind that all mediation centers operate differently. It was not fair to hold all accountable for the actions of a rogue mediator at a single center. Ms. Leazer reported for the Judicial Support Staff Conference. She noted that she was present as an observer today and appreciated the opportunity to attend. Mr. Igou reported for the Section. He noted they will be working with the Commission on CME as they plan their annual meeting. Mr. Igou also noted that during his term as the Section's chair, he wants to interface more with law schools and law students regarding dispute resolution. He also noted that there was renewed interest in collaborating with the Commission to try and invigorate the Clerk Mediation Program. Mr. Laney added that he is chair of the Section's Nominating Committee and that the Section intends to re-nominate those members of the Commission whose terms expire this September. Stephanie Nesbitt reported for the AOC. She said she has tentative caseload reports for 2014/15. She noted that she has had conversations with court staff in nearly all districts and they universally complain of the failure of mediators to fulfill their case management duties. Without timely submission of Reports of Mediator, she explains that staff cannot report accurate

statistics. She encouraged the Commission to take this concern seriously. She reported that case filings, in general, are down and there was a 17% drop from the previous fiscal year in cases referred to MSC mediation. She added that there was a 4% decrease in the number of FFS cases referred to mediation. On the other hand, arbitration referrals, she reported, were up 16%. She noted there was a 200% increase in Clerk mediations, though admittedly total referrals was still a very small number. Judge Caldwell asked about reporting by judicial district and Ms. Nesbitt noted that all MSC districts are reporting, but some FFS districts are not. Judge Vincent said that the Commission needs to get the statistics issue in front of new CDCJs. Ms. Rose reported for the Trial Court Administrator's Conference that the court funding issue is looking a little better these days. Mr. Schafer reported a very successful year at the IC with over 9,000 cases referred into mediation and 73.7% settlement rate. The IC's mediator conference is scheduled for October 14-16, 2015. Judge Stroud reported for the Court of Appeal's Mediation Program that the program has lost some mediators, including Judges Hunter and Steelman. They are, she added, in the process of getting their new judges trained. She asked that the Commission help her get the word out about the program and their efforts to make it more user friendly. Ms. Hopkins suggested an article for the Commission's newsletter.

Judge Cash asked Ms. Ratliff for a report from the Commission's office. She briefly noted that the office is in the middle of its annual renewal period, July 1-September 30, and that as of this renewal cycle, the renewal period is now synchronized with the AOC's fiscal year. She also gave a budget report for the fiscal year ending June 30, 2015. She reported that the Commission had total expenditures of \$251,180.00 and total fee collections of \$226,180.00 for a deficit of \$25,121.00. She added that this deficit reduced the Commission's cumulative unspent revenue amount to \$151,905 going forward. She noted that staff had discussed the possibility of renaming the Commission's newsletter and that Ms. Robinson had suggested a contest allowing mediators to suggest a name. She asked Commission members to be thinking about that possibility. She also asked them to be on the lookout for the Commission's Annual Report for FY 2014/15 which should be out in October. She noted some minor technical corrections to FFS Rule 1 and the comment to that Rule and Standard III. These changes were approved. Lastly, Ms. Ratliff noted that Commission staff had completed a number of large projects over the past year and a half, and having wrapped those up, would be looking for new challenges. She asked Commission members to let her know of any ideas they had for projects or research. There followed some discussion about social media and the Commission's website and Judge Cash appointed a new Social Media Committee to be chaired by Mr. Armeña. Ms. Seigle and Judges Stroud and Vincent will also serve. Judge Caldwell suggested that the Committee look at the State Bar's rules on social media.

Judge Cash asked about new business. There being none, he asked whether members wished to return to Asheville for the next retreat. Ms. Ratliff noted that one person had asked her about returning to Shelton's Vinyard. Ms. Leazer suggested the Hilton Garden Inn at Kitty Hawk and Judge Caldwell suggested New Bern. Ms. Ratliff will put together some information on these places as well contact the Asheville Doubletree and determine what arrangements can be made for mid to late August and email it to members. Judge Cash thanked everyone for coming and adjourned the meeting.

# **Dispute Resolution Commission**

## **MINUTES**

**Friday, May 15, 2015  
Grandover Hotel & Resort, Greensboro, NC  
10:00 AM**

Members present: Cash, C. Anderson, Armeña, Caldwell, T. Clare, Dollar (by telephone), Gullick, Hicks, Long, McCullough, Seigle, Spence, Vincent, and Webb. Ex-officio members, guests, and staff present: A. Anderson, Baroff, Barrier (for Hayden), Beason, J. Clare, Henderson, Igou, Laney, Lee, Little, Nease Brown, Nesbitt, Ratliff, Rinker, Schafer, Steelman, Stroud, Walker and Woodward. The following sent their regrets: Estle, Evans, Hayden, Long, Ponton, Rose, and Turner.

Judge Cash welcomed everyone and asked those present to introduce themselves. Guests included Roy Baroff and Jeremy Rinker appearing on behalf of Guildford College's Conflict Resolution Resource Center (CRRC); Deneen Barrier, TCC in District 14, substituting for Tueresa Hayden; Rick Igou from the NCBA's Dispute Resolution Section; and Judge Ralph Walker, former Commission Chair. Judge Cash also noted Judge Donna Stroud who will be replacing Judge Steelman as liaison from the Court of Appeals Mediation Program. Judge Cash added that the Commission wished Judge Steelman a happy retirement.

Judge Cash called for approval of the February minutes. They were approved as submitted. Ms. Ratliff read SEC reports for Mr. Armeña, Judge Cash, Mr. Long, Mr. Ponton, and Judge Webb into the record, noting that the SEC had approved their service to the Commission. Judge Cash called for nominations for the position of Vice-Chair. Ms. Gullick was nominated, agreed to serve, and was elected.

Judge Cash next provided some background as to why Messrs. Baroff and Rinker wished to address the Commission regarding CRRC and its interest in offering a certified district criminal court mediation training program. Mr. Baroff explained that CRRC was initially intended to be a resource for students, but had expanded its focus and gotten more involved with the wider community. He added that one venue they were interested in was district criminal court mediation. He noted that DCC Rule 8 is not explicit about what entities could be certified to conduct training and he contacted Ms. Ratliff to inquire whether CRRC was eligible. He added that CRRC is interested only in providing the training, not in providing the other elements involved in DCC certification. Mr. Baroff reported that he was advised by the Commission's Mediator Certification and Training Committee that, when looked at in their entirety, the DCC Rules provided that only community mediation centers were eligible to be certified. He and Mr. Rinker were appearing today to ask that the matter be revisited. Mr. Baroff suggested there is no definition of what a community mediation center is, either in the DCC Rules or community

mediation statutes, and he believes that the CRRC is, in fact, an equivalent entity. Ms. Henderson asked Messrs. Baroff and Rinker about the community mediation center in Guilford County, One Step Further, and Ms. Ratliff noted that the office had recently received an application from One Step Further seeking to participate in the DCC program and serve as a trainer. Mr. Little asked whether One Step Further was interested in partnering with CRRC and Mr. Rinker said he did not think so. Mr. Little noted that the Committee's letter to Mr. Baroff should have indicated that Ms. Seigle and Mr. Laney led the effort to establish the DCC Program, not he and Mr. Laney. Judge Webb wondered whether the correct approach was for the CRRC to simply file an actual application at this point if it wished the Committee to reconsider the matter. Judge McCullough asked Mr. Baroff whether those trained by CRRC would be required to also take internal training from individual centers. Mr. Baroff thought that would be likely and Judge McCullough noted that was a concern for the Committee. Mr. Rinker added that they would be very clear with their students that this course is a first step only and not designed to lead to certification. Ms. Seigle noted that her center required a 40-hour training program. Ms. Henderson said her center would look kindly on a 24-hour program, but require their own overlay. At this point, Judge Cash thanked Messrs. Baroff and Rinker for the additional information and suggested that this matter be put back before the Committee for further discussion and consideration.

Ms. Gullick expressed concern about the fact that DCC mediators are collecting funds and wondered about accountability. Ms. Anderson noted that the local bar in her district had expressed concerns about district criminal court mediation. Ms. Seigle says she is very concerned that so few centers have become part of the Supreme Court's Program. She believes there needs to be more accountability, especially now that money is involved. Judge Stroud indicated that she had heard concerns at the Courts Commission relating to fee collection in district criminal court and to mediator power vis-à-vis dismissals. Ms. Seigle noted that her center makes no representations to parties that their case can be dismissed, but stresses that is the prerogative of the DA. Ms. Henderson believes there is an inherent ethical dilemma in taking money to settle cases and her center, she reported, found community funds to support its program in lieu of collecting fees. Mr. Spence noted that he is also concerned that the process is ripe for the unauthorized practice of law. Judge Caldwell suggested that perhaps these concerns ought to be raised in the legislature. Ms. Seigle moved to have the Commission appoint a study committee to look at the centers, including the fee collection issue. Ms. Nease Brown said she hoped that any such group would have a broad base. Judge Cash called for a vote on Ms. Seigle's motion. It was approved. He asked Ms. Seigle and Judge Stroud to serve and asked others to consider volunteering.

Mr. Little gave the legislative report for the Executive Committee: HB 303 (SB 709) had crossed over to the Senate and was now before Senate Judiciary II. This is a bill that was introduced by the Commission and addresses several matters, including cease and desist actions and unspent revenue. HB 38, Mr. Little reported, relates to court efficiency and has crossed over. That bill provides for mediation of civil district court matters. It has been referred back to the Appropriations Committee and Mr. Little anticipates it will pass. HB 597 was introduced by Representative Bishop and relates to the enforceability of agreements. That bill has been placed on the calendar. (As of the writing of these Minutes, it has been approved.)

Judge McCullough next reported for the Mediator Certification and Training Committee. He directed the Committee's attention to the Inaugural CME Proposal. He briefly walked the group through the proposal, suggesting that the words, "top priority" should be stricken from item #3. Judge McCullough noted that he did not feel this proposal was burdensome on mediators since it involved only 2 hours training. Mr. Little noted that he had spoken with Mr. Igou and believed the Section's February annual meeting would be a good time to conduct a dry run. Judge McCullough noted that Ms. Anderson had been designated to be the liaison to the Section on this issue and was also the CLE Chair for the Section. Mr. Igou and Ms. Woodward said there would be a two-hour training component that would be offered at the February meeting and videotaped for purposes of the Proposal. There followed some discussion on whether the focus on the Section as a training provider was too narrow. Mr. Little explained there was no effort to cut out private providers, but he thought the Bar's taping facilities were a big advantage. Moreover, he hopes the training can be approved by the Bar and the Commission so that CME is not an overlay, but a part of attorneys' existing CLE requirement. Judge Webb thinks there should be more choice relative to providers. Ms. Anderson suggested that she could get a representative from the State Bar to the August Commission meeting to talk about the CLE process if there was interest. Judge Cash agreed that was a good idea and Ms. Anderson will invite Catherine Peglow. Judge McCullough noted there would be a lot of mechanical issues to work out with staff. Mr. Little observed that the scope of this requirement was very limited and focused exclusively on program rules, Standards, and Advisory Opinions. Mr. Igou noted that the NC chapter of the Association of Professional Family Mediators would also be interested in providing training. Judge Cash noted that the Commission will continue to explore the matter and thanked the Committee for its work.

Judge Cash next discussed the credit card payment issue and said he was still trying to get AOC assistance. He will continue to explore matters with the AOC's Jeff Maresic.

Judge Caldwell, reporting for the Superior Court Program Oversight Committee, called attention to the MSC Benchbooks which have now been distributed statewide to judges and court staff. Ms. Ratliff noted that staff has also gotten some draft documents out for review on the mentorship component and will be reporting on those materials at the August meeting. Ms. Ratliff noted that Ms. Barrier had been very helpful in working with DRC staff to develop the MSC Benchbook for Court Staff.

Ms. Ratliff reported for Mr. Long and the District Court Program Oversight Committee that staff has gotten drafts of the FFS Benchbooks out to a few district court judges and court staff for review. She added that DCC court staff were being very helpful in providing comments and she singled out Monica Hughes (District 18), Sharon Orr (District 29B), Nancy Capps (District 17A), and Ellen Rose (District 10) among others. Lastly, Ms. Ratliff added that the Spanish language version of the DCC video had also been distributed.

Ms. Gullick reported for the Standards and Advisory Opinions Committee. She described the need for the proposed new AO relating to the drafting of agreements in mediations where an attorney is present, but there is also a *pro se* party in attendance. The Opinion was adopted as submitted and Ms. Ratliff was asked to post it for comment and bring it to the August meeting for final approval.

Judge Anderson reported for the Grievance and Disciplinary Committee and described a number of matters the Committee considered this quarter. He first recounted a complaint about a district criminal court mediator which resulted in decertification. The mediator had inappropriately collected/retained dismissal and restitution fees and his failure to conduct the mediation in a competent manner had resulted in the arrest of two mediation participants. There followed some discussion about this matter. In a second matter, a mediator was also decertified. In that instance, the mediator was selected to conduct an FFS mediation, but had failed to schedule a conference and filed a Report of Mediator indicating that no mediation was held because the matter may be resolved. Thereafter, and in violation of Standard VII, the mediator had proceeded to represent the participant wife in both 50B and equitable distribution actions. This mediator had also failed to report a suspension of his law license on his original certification action. In a third matter, Judge Anderson reported that a complaint was dismissed by the chair for alleging insufficient facts to constitute a violation of any rule or Standard. Judge Anderson noted that two additional complaints were pending and under investigation. He added that there was a fourth matter before the Committee which involved a mediator who had failed to report a State Bar Complaint to the Commission within the 30-day period provided by FFS Rule 8.F. Lastly, Judge Anderson reported that his Committee would also be looking at some rule matters, including potential revisions to DRC Rule IX and considering whether the Committee was required to report attorney mediators pursuant to State Bar Rule 8.3(a) in instances where they failed to disclose disciplinary matters on certification and certification renewal applications. He added that he anticipated the Rule IX changes would be ready for consideration at the August meeting. Lastly, he called attention to a proposed change to DCC Rule 7. This change, Judge Anderson explained, is intended to require community mediation centers participating in the Supreme Court Program to report complaints about DCC certified mediators to the Commission when those complaints involve potential Standard or program rule violations or fitness or character issues. The rule change was adopted as submitted and will be posted for comment.

Ms. Clare next addressed the issue of immunity for Commission members and gave a brief report on fallout from the teeth whitening case heard by the Supreme Court. She also reported on her discussions with Alice Mine regarding the case. She noted that market participation among the members of a regulatory body and whether the body had adequate State oversight were important issues to consider in light of the decision. She suggested that the Commission may want to explore getting D & O insurance. Mr. Little suggested looking at Complete Equity Markets. Judge Cash asked Ms. Ratliff to get some quotes. Ms. Anderson and Ms. Clare will also look at drafting some immunity language.

Judge Cash next called for ex-officio reports: Ms. Barrier noted that the JSSC had a conference in Kitty Hawk. Mr. Laney reported that Justice Martin, the first federal appellate mediator, had died. Mr. Laney also reported that he had recently traveled to Belarus to train the individuals who had traveled to this country from Belarus last year, as well as others, in mediation theory and process. Ms. Nesbitt reported that Director John Smith had retired. She also reported on preliminary caseload statistics for both the MSC and FFS Programs and said she would have a final report in August. Judge Cash would like for the new AOC Director to attend the November meeting. Ms. Ratliff was asked to see if she could make arrangements. Mr. Schafer reported that all was well at the IC and that over 9,000 cases were ordered to IC mediation this year.

Judge Steelman reported for the Court of Appeals Mediation Program noting that settlement rates are around 47%. He noted that they want to encourage participation in the program and that Judge Stroud, who will be taking over for him, reported they have now updated the website to facilitate participation. She noted that more of their judges were scheduled to be trained. Ms. Woodward reported that the Section has done two webinars -- one on confidentiality and one on beginning your mediation practice. Mr. Igou said that the Section is doing outreach to the law schools, both to promote ADR and to encourage participation in the Section. Deneen noted that she is still having trouble with court appointed mediators who live far from Durham. When she calls them, they often tell her that they are not interested in coming so far. She asked the Commission to do what it could to discourage mediators from selecting far flung districts for purposes of their court appointments.

Judge Cash set Friday, February 26, 2016, for the winter meeting to be held in Raleigh.

# Dispute Resolution Commission

## MINUTES

Friday, February 27, 2015

10:00 AM

### Telephone Conference Call

*(This meeting was originally scheduled to be held at the Grandover Hotel in Greensboro, but was rescheduled as a telephone conference due to inclement weather. The May 15, 2015, meeting has been rescheduled to the Grandover.)*

Members present: Cash, C. Anderson, Armeña, Caldwell, T. Clare, Dollar, Evans, Gullick, Hicks, Long, McCullough, Seigle, and Vincent. Ex-officio members and staff present: A. Anderson, Brown, J. Clare, Hayden, Hopkins, Laney, Lee, Little, Nesbitt, Ratliff, Robinson, Rose, Schafer, Steelman, and Turner, Judge Webb, Mr. Ponton, Mr. Spence, and Mr. Beason sent their regrets.

Judge Cash began by noting that the first part of the call would deal with Commission business, including committee and liaison reports. During the second part of call, the Commission would address a DRC Rule IX.E(13) Request for Reinstatement filed by Applicant X. In the interest of observing confidentiality and protecting Applicant X's privacy, he noted that ex-officio members would be dismissed for that portion of the call.

Judge Cash next called for approval of the November minutes and they were approved as submitted. He next called for Committee reports.

Judge Caldwell reported for the MSC Program Oversight Committee calling attention to the proposed MSC Benchbooks. He asked staff whether they had any comments about the Benchbooks and Ms. Ratliff noted that she appreciated the feedback staff had received from Commission members and ex-officio members. She added that, assuming these books were adopted, staff would begin working on an FFS version which she hoped to have for the May meeting. She noted also that the Benchbooks represented the first phase of what would be a three phase project with the remaining two phases involving: 1) setting up a system whereby AOC staff would notify the Commission and the JSS Conference when new judges took office and new support staff were hired, and 2) identifying court staff willing to mentor newly hired judicial assistants and trial court coordinators. She added that Commission staff would be meeting with Ms. Nesbitt and Ms. Hayden shortly to discuss implementing the remaining phases. Mr. Little noted that School of Government staff would like to post copies of the Benchbooks online. Ms. Ratliff noted that she was aware of their interest and would email copies. Mr. Laney asked whether the books would be printed or emailed and Ms. Ratliff noted they would be printed in color and spiral bound.

Mr. Long reported as past chair of the Mediator Certification and Training Committee. Mr. Long first called attention to the packet relating to Provisional Pre-training Approvals. There were some typos noted in the documents. Mr. Long pointed out a substantive concern he had with the first paragraph of the document that explained the process to individuals interested in seeking a

preapproval. He was concerned that the language did not make it clear that the Commission had the final word on certification. Ms. Hopkins suggested that the final sentence of the paragraph be rewritten as follows: "Commission staff may also issue Provisional Pre-training Approvals at the request of individuals seeking assurances, prior to registering for training, that some ethical or fitness to practice concern they have experienced does not appear to serve as a bar to certification under MSC Rule 8.E. or FFS Rule 8.F; however, an issuance of a Provisional Pre-training Approval is not a guarantee of certification and the Commission is the final authority in determining an applicant's eligibility for certification." With these changes, the materials relating to Provisional Pre-training Approvals were adopted. Mr. Long next called attention to the proposed policies on Inactive Status, Lapsed Status and Reinstatement, and the Guidelines for Evaluating Dated and Out-of-State Training which had all been tentatively approved at the November meeting. He went over minor changes to these documents since the November meeting. Following a brief discussion, the documents were all given final approval and will be posted for comment. Mr. Long thanked the members of his Committee for their work on the packet and noted he had appreciated the opportunity to serve as the Committee's chair. Judge Cash next called on Judge McCullough, the Committee's new chair, to update the group on more recent matters before the Committee. Judge McCullough noted that staff, in consultation with the chair, had denied a preapproval sought by a Family Court Case Coordinator. He noted that, while the individual was doing important case management work, a determination could not be made that the position involved high or relatively high level work of an executive nature as required by MSC Rule 8.B(2)(c)(ii). He next noted the Committee would be considering two additional pre-training approval requests, one from a trainer interested in district criminal court training program certification and one from an individual seeking a pre-training approval of FFS certification eligibility. He stated also that his Committee will meet before the next Commission meeting to discuss CME.

Judge Cash next called on Ms. Gullick to report for the Standards and Advisory Opinions Committee. Ms. Gullick reported that her Committee had three advisory opinions under development. Two dealt with situations where one party to the mediation is *pro se*. The third will address a mediator misconduct issue that has come to the Committee's attention.

Judge Anderson next reported for the Grievance Committee. He noted that his Committee had an extremely busy quarter and had addressed a number of matters: 1) The Commission held a *de novo* hearing on December 19, 2014, in the wake of a denial of FFS certification issued by the Committee. The Commission also denied the application and the applicant was notified. To date, the Commission has not been notified that the applicant has appealed to the superior court in Wake County. 2) Letters were sent to two mediators in situations where court staff had raised case management concerns with Commission staff. Both mediators later contacted the Commission's office to complain about the letters. One of the mediators sought removal of the letter from his file. Judge Cash agreed and the letter was withdrawn. Judge Anderson noted that in the wake of these experiences, there would need to be continued discussion and refinement of the process and rules for responding to court staff concerns. 3) A complaint was filed against court staff by a mediation participant in an FFS case who alleged that court staff had denied him an opportunity to mediate. Since the Commission has no jurisdiction over court staff, the Committee directed staff to dismiss the complaint. Though there was no jurisdiction, staff was directed to ask the mediator why he did not do more to fulfill his case management duties in the matter. A letter was sent on January 15, 2015, and to date there has been no response. Thereafter, the FFS participant filed a second complaint naming the mediator in this

subsequent filing. Staff forwarded the complaint to the mediator on February 3, 2015, asking him to respond. A third letter was sent by Commission staff to this same mediator on February 12, 2015. This letter asked the mediator to explain why he did not disclose a suspension of his license to practice law on his original FFS mediator certification application. This omission came to light in attachments filed by the FFS participant with his second complaint. Mr. Laney asked what happens when a mediator fails to respond to a letter raising conduct/fitness concerns? Ms. Ratliff responded that this has never happened in her experience and she wondered whether the mediator was confused and somehow thought he did not have to respond to the first letter since the complaint had been dismissed. She added that staff would certainly notify the Committee if he failed to respond to the additional letters. Judge Caldwell noted that the State Bar treats a failure to respond as a disciplinary matter in and of itself. 4) The Commission received a complaint from a party to an IC mediation on December 12, 2014. The mediator who conducted that mediation was sent a copy of the complaint on January 22, 2015, and asked to respond. 5) An applicant whose law license was suspended for five years sought a preapproval of eligibility to be certified. The applicant was determined to have had sex with a client and violated rules relating to conflict of interest. On December 29, 2014, the Committee determined not to issue the preapproval until such time as the applicant had completed his period of suspension and been reinstated. 6) On December 1, 2014, an additional complaint was filed with the Commission against a district criminal court (DCC) mediator. The party filing the complaint was also a DCC mediator. The complaint raised both concerns regarding the mediator's conduct in mediation and concerns regarding his interactions with center staff, his supervisor, and mediation participants outside the process. Thereafter, two additional complaints were received by the Commission which related to this mediator and his conduct in mediation. Also, the Mediation Network of North Carolina raised an additional matter with the Commission regarding this mediator's conduct. Given these two additional complaints and the MNNC inquiry, the original complaining party in this matter withdrew her complaint, preferring to remain anonymous now that the mediator's conduct would otherwise be addressed by the Committee. Lastly, Judge Anderson noted that the DCC complaints raised a policy question as to whether mediation center staff had any obligation to report third party concerns regarding a certified DCC mediator's conduct to the Commission as opposed to simply having their staff or board address the matter. Ms. Ratliff noted that it had always been her experience that complaints regarding mediator conduct generally arrived in clusters, but that this Committee had been deluged this quarter. Judge Cash thanked Judge Anderson and the Committee members for their hard work.

Next Ms. Anderson reported for the Ad hoc Video Committee. She noted that the Spanish language version of the district criminal court video had been completed. She said there had been a minor hiccup relating to the translation of titles and captions, but it had been resolved. She added that the Committee was now seeking \$455.00 from the Commission to underwrite duplication/distribution of the Spanish version. The Commission authorized the expenditure.

Judge Cash next called for liaison reports. Ms. Hayden reported that the JSS Conference (March 16 – 20, 2015) had been reinstated and that Commission staff would be forwarding materials for distribution to attendees. Ms. Nesbitt reported for the AOC that she was still trying to clear up some confusion relating to MSC caseload reporting on Casewise. In particular, she noted concerns with columns reporting pending cases. Mr. Schafer reported that there had been changes to the IC fee schedules. Ms. Rose reported that the Trial Court Administrators' Conference had been scheduled for May. Judge Steelman reported for the Court Of Appeals Mediation Program that he would be retiring.

July 1, 2015, and that Judge Donna Stroud would assume the position of liaison to the Commission from the COA Mediation Program. Everyone wished Judge Steelman well. He indicated he would remain involved as a Chair Emeritus.

Liaison reports concluded, Judge Cash dismissed the ex-officio members from the call and asked the Commission members remaining on the line to now focus on Applicant X's DRC Rule IX.E(13) request for reinstatement. Judge Cash began by taking roll and the following Commission members had remained on the line to participate in the discussion: Cash, Anderson, Armena, Caldwell, Clare, Evans, Gullick, Long, McCullough, Seigle, and Vincent.

Judge Cash asked if everyone had an opportunity to review the materials submitted to the Commission relating to this matter, including Applicant X's updated application, resume, and January 16, 2015, letter of justification as well as the transcript of the hearing and the Commission Decision following his 2010 appeal. The materials had been received and reviewed. Next, Judge Cash asked Ms. Ratliff to provide a brief time line/summary of the matter beginning with Applicant X's 2009 request for a preapproval through his current request for reinstatement. Judge Cash thereafter noted that the Commission members present would be considering four questions pursuant to DRC Rule IX.E(13)(g) and(h):

- 1) Whether Applicant X had rehabilitated his character?
- 2) Whether Applicant X had taken steps to address or resolve the conditions that led to the denial of his 2009 application for MSC mediator certification?
- 3) Whether Applicant X is fit to be certified and whether his certification would be detrimental to the MSC Program, the courts, the Commission and the public?
- 4) Whether applicant X should be certified?

Following a brief discussion, Judge Cash polled the members on each of the points above and the members determined on unanimous vote that:

- 1) Applicant X had not rehabilitated his character.
- 2) Applicant X had not resolved the conditions that led to the denial of his 2009 application for MSC mediator certification.
- 3) Applicant X is not fit to be certified and his certification would be detrimental to the MSC Program, the courts, the Commission and the public.
- 4) Applicant X should not be certified.

As such, Judge Cash asked Commission staff to draft a Decision denying the Application and setting forth Findings of Fact and Conclusions of Law in the matter.

At this time, Judge Cash adjourned the meeting.